

AUG 10 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. <u>93-178</u>
	)	
HOWARD B. DOLGOFF	)	File No. BPH-911223ME
	)	
MARK AND RENEE CARTER	)	File No. BPH-911224MD
	)	
For Construction Permit for a New	)	
FM Station on Channel 292A	)	
Miramar Beach, Florida	)	

To: Administrative Law Judge  
John Frysiak

**MASS MEDIA BUREAU'S OPPOSITION  
TO CONTINGENT MOTION TO ENLARGE ISSUES**

1. On July 26, 1993, Mark and Renee Carter ("the Carters") filed a Contingent Motion to Enlarge Issues. The Mass Media Bureau submits the following comments, which are limited to the second requested issue, the "hard look violation issue." We oppose addition of the issue.

2. The Carters' motion is contingent upon denial of the Carters' concurrently filed motion for summary decision against Howard B. Dolgoff ("Dolgoff")<sup>1</sup>, and denial of the Carters' request for certification of the Hearing Designation Order, 8 FCC Rcd 4337 (1993) ("HDO"). In fact, the Carters' request for certification was denied by Memorandum Opinion and Order released July 20, 1993 (FCC 93M-478).

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<sup>1</sup> The Carters' Motion for Summary Decision seeks immediate dismissal of Dolgoff's application for lacking reasonable assurance of a transmitter site.

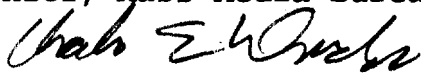
3. The Carters' instant request for a "hard look violation issue" repeats the same arguments made, and rejected, in connection with the Carters' request for certification. Indeed, the Carters are once again quarreling with the HDO. Addition of an issue already fully considered, and rejected, by the HDO is not permissible. Atlantic Broadcasting Co., 5 FCC 2d 717 (1966). It appears, rather, that the Carters' request for the issue is contrived. We submit that it is no more than an unauthorized vehicle to reply to the Bureau's opposition to the Carters' certification motion, which is precisely what the Carters do, via voluminous footnotes. Moreover, the Carters' instant request may be moot in view of the denial of the request for certification. Such gamesmanship, bordering on an abuse of process, must not be permitted.


4. In any event, as we explained in the Bureau's Opposition to Request to Certify Application for Review, Dolgoff's application was not subject to dismissal under the "hard look" policy. See Statement of New Policy Regarding Commercial FM Applications that are not Substantially Complete or are Otherwise Defective (Appendix D), 58 RR 2d 166 (1985). We stand by our Opposition, which we incorporate herein by reference, notwithstanding the Carters' disagreement with the Bureau's position.

5. The Carters allege that Dolgoff's application violated the "hard look" policy because an amendment failed to request processing under Section 73.215 of the Commission's Rules. That rule, however, deals with contour protection for short spaced stations, and is inapplicable to the instant situation. Since Dolgoff qualified for processing under Section 73.213(c)(1), for the reasons clearly explained in the HDO, he was not considered short spaced. Thus, once Dolgoff chose to proceed under Section 73.213(c)(1) it would have been absurd for him to seek processing under Section 73.215. Moreover, since Dolgoff was not processed under Section 73.215, there was no requirement for an exhibit concerning contour protection.

6. Dolgoff's application did not violate the "hard look" policy. The Carters' motion to add a "hard look violation issue" should be denied.

Respectfully submitted,  
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August 10, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 10th day of August, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Contingent Motion to Enlarge Issues" to:

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